

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

DAMIEN GREEN,

Plaintiff,

v.

D. HENNING, HANNAH UTTER,
BEAIR, SGT. SHIERLAND, JON
KIND, DYLYN RADTKE, TODD
HAMILTON, PYNENBERG, and
CAPT. ELSINGER,

Defendants.

Case No. 22-CV-702-JPS

ORDER

Plaintiff Damien Green, an inmate confined at Green Bay Correctional Institution (“GBCI”), filed a pro se complaint under 42 U.S.C. § 1983 alleging that the defendants violated his constitutional rights. ECF No. 1. This Order resolves Plaintiff’s motion for leave to proceed without prepaying the filing fee and motion to appoint counsel, as well as screens his complaint.

1. MOTION FOR LEAVE TO PROCEED WITHOUT PREPAYING THE FILING FEE

The Prison Litigation Reform Act (“PLRA”) applies to this case because Plaintiff was a prisoner when he filed his complaint. *See* 28 U.S.C. § 1915(h). The PLRA allows the Court to give a prisoner plaintiff the ability to proceed with his case without prepaying the civil case filing fee. *Id.* § 1915(a)(2). When funds exist, the prisoner must pay an initial partial filing fee. 28 U.S.C. § 1915(b)(1). He must then pay the balance of the \$350 filing fee over time, through deductions from his prisoner account. *Id.*

On July 5, 2022, the Court ordered Plaintiff to pay an initial partial filing fee of \$42.29. ECF No. 7. Plaintiff paid that fee on August 2, 2022. The Court will grant Plaintiff's motion for leave to proceed without prepaying the filing fee. ECF No. 2. He must pay the remainder of the filing fee over time in the manner explained at the end of this Order.

2. SCREENING THE COMPLAINT

2.1 Federal Screening Standard

Under the PLRA, the Court must screen complaints brought by prisoners seeking relief from a governmental entity or an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint if the prisoner raises claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b).

In determining whether the complaint states a claim, the Court applies the same standard that applies to dismissals under Federal Rule of Civil Procedure 12(b)(6). *See Cesal v. Moats*, 851 F.3d 714, 720 (7th Cir. 2017) (citing *Booker-El v. Superintendent, Ind. State Prison*, 668 F.3d 896, 899 (7th Cir. 2012)). A complaint must include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The complaint must contain enough facts, accepted as true, to "state a claim for relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows a court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556).

To state a claim for relief under 42 U.S.C. § 1983, a plaintiff must allege that someone deprived him of a right secured by the Constitution or the laws of the United States and that whoever deprived him of this right was acting under the color of state law. *D.S. v. E. Porter Cnty. Sch. Corp.*, 799 F.3d 793, 798 (7th Cir. 2015) (citing *Buchanan-Moore v. County of Milwaukee*, 570 F.3d 824, 827 (7th Cir. 2009)). The Court construes pro se complaints liberally and holds them to a less stringent standard than pleadings drafted by lawyers. *Cesal*, 851 F.3d at 720 (citing *Perez v. Fenoglio*, 792 F.3d 768, 776 (7th Cir. 2015)).

2.2 Plaintiff's Allegations

Plaintiff names Defendants D. Henning ("Henning"), Hannah Utter ("Utter"), Beair, Unit Sgt. Schierland ("Schierland"), Jon Kind ("Kind"), Dylon Radtke ("Radtke"), Todd Hamilton ("Hamilton"), Pynenberg, and Captain Elsinger ("Elsinger"), all employed at GBCI at the relevant time. ECF No 1 at 1. Plaintiff suffers from major depression, has generalized anxiety, and is classified as seriously mentally ill. *Id.* at 3-4.

On or about June 30, 2021, Pynenberg and Nelson came to Plaintiff's cell #233. *Id.* at 4. They lied to L.T. Tonia Rozmarynoski ("Rozmarynoski") that he was going self-harm; Plaintiff had only said that he was going to go on a hunger strike. *Id.* Rozmarynoski then came to Plaintiff's cell to place him on observation. *Id.* On third shift, Plaintiff cut himself while in observation. *Id.* L.T. Kent came, took away Plaintiff's razor, and placed him on one-on-one observation where an officer watched him to prevent self-harm. *Id.*

On July 1, 2021, Plaintiff's observation checker was not coming to check on him every fifteen minutes. *Id.* Plaintiff told him or her that he was going to self-harm. *Id.* At approximately 3:25 p.m., Plaintiff rolled up some

plastic and put it inside his penis. *Id.* at 4-5. At 3:30 p.m., Plaintiff told Schierland that he needed to see HSU because he put stuff up his penis and blood was coming out. *Id.* at 5. Schierland failed to get Plaintiff any medical help or treatment. *Id.* Plaintiff asked every officer that walked by that he needed to see HSU. *Id.*

At 4:30 p.m., Rozmarynoski came to Plaintiff's cell and Plaintiff asked to see HSU and showed her that he was bleeding. *Id.* Rozmarynoski pulled him to the interview room and called nurse Henning. *Id.* Henning refused to see Plaintiff and said that it would pass. *Id.* Plaintiff has a history of medical problems, including chronic bladder dysfunction, that required him to "cath" himself. *Id.* The plastic in his penis would therefore not pass because of his condition. *Id.* at 6. Based on Henning's guidance, Rozmarynoski placed Plaintiff back in the observation cell. *Id.* Plaintiff told the observation checker that he was in pain and bleeding, but he received no medical attention. *Id.*

At approximately 11:00 p.m., Rozmarynoski had Plaintiff pulled out to see a third-shift nurse, S. Bost. *Id.* The nurse checked Plaintiff and felt the plastic in his penis. *Id.* The nurse instructed Plaintiff to drink a lot of water and they would see if the plastic passed in one hour. *Id.* Plaintiff told him that it could not pass due to his catheter. *Id.* Plaintiff went back to his observation cell and drank lots of water as instructed, and he later threw up all the water. *Id.* At approximately 12:00 a.m.¹, Plaintiff was taken from his cell and allowed to speak to nurse S. Bost again. *Id.* at 7. Nurse Bost said he was going to send Plaintiff off grounds for medical treatment. *Id.*

¹ Plaintiff's complaint states 12:00 p.m. but based on the timeline of events, the Court presumes he meant midnight, 12:00 a.m.

Two guards strip searched Plaintiff and then transported him to St. Vincent Emergency Room. *Id.*

At the emergency room, a doctor told Plaintiff that he would try to get the plastic out. *Id.* The doctor was able to take out part of the plastic but had to wait for Dr. Burns in urology to come in later that morning. *Id.* Plaintiff was able to urinate with catheter assistance. *Id.* At some point early that morning, Plaintiff was able to see urology and Dr. Burns removed the plastic. *Id.* at 8.

Plaintiff arrived back at GBCI at approximately 8:30 a.m. and was placed in an interview room. *Id.* Pynenberg and Elsinger tried to strap Plaintiff down to the bed. *Id.* Hamilton arrived and told Plaintiff he was being strapped down because of his catheter. *Id.* Plaintiff told them he had previously been in observation with his catheter without being strapped down so he felt like they were just punishing him rather than trying to protect him. *Id.* Elsinger came back to the room and talked with Plaintiff about strapping him down for “everything” Plaintiff had done. *Id.* at 8–9. Plaintiff was then strip-searched and strapped down to the bed. *Id.* at 9. While strapped down, Plaintiff suffered unbearable pain and suffering. *Id.* Plaintiff was strapped down to the bed for ten hours and strapped down in a chair for two hours. *Id.*

At some point, Pynenberg returned and told Plaintiff she was keeping him strapped down for twelve more hours. *Id.* Plaintiff questioned why additional time was warranted because he had not been acting up or trying to get out of the straps. *Id.* Pynenberg replied that her boss, Hamilton, got it was approved by Madison *Id.* at 10. Plaintiff was strapped down for twenty-three hours total. *Id.* As a result of being strapped down, Plaintiff’s whole body hurt, and it was difficult for him to walk. *Id.* Pynenberg took

Plaintiff off one-on-one, and he was placed back in an observation cell. *Id.*

Plaintiff got out of the observation cell one week later. *Id.*

2.3 Analysis

First, Plaintiff may proceed on an Eighth Amendment deliberate-indifference claim against Schierland and Henning for their indifference to Plaintiff's serious medical need. The Eighth Amendment secures an inmate's right to medical care. Prison officials violate this right when they "display deliberate indifference to serious medical needs of prisoners." *Greeno v. Daley*, 414 F.3d 645, 652 (7th Cir. 2005) (internal quotation omitted). Deliberate indifference claims contain both an objective and a subjective component: the inmate "must first establish that his medical condition is objectively, 'sufficiently serious,'; and second, that prison officials acted with a 'sufficiently culpable state of mind,' i.e., that they both knew of and disregarded an excessive risk to inmate health." *Lewis v. McLean*, 864 F.3d 556, 562–63 (7th Cir. 2017) (quoting *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (internal citations omitted)).

Plaintiff alleges that Schierland and Henning denied him medical care to address the bleeding and plastic in his penis. At the pleadings stage, the Court finds that Plaintiff's allegations sufficiently state an Eighth Amendment deliberate-indifference claim to a serious medical need against Schierland and Henning.

Second, Plaintiff may proceed on an Eighth Amendment conditions of confinement claim against Pynenberg, Elsinger, and Hamilton. A prisoner's claim of unconstitutional conditions of confinement is analyzed under the Eighth Amendment's cruel and unusual punishment clause. *See Farmer v. Brennan*, 511 U.S. 832, 834 (1994). A prisoner is entitled to live in conditions that do not amount to "punishment." *Bell v. Wolfish*, 441 U.S. 520,

535 (1979). Detainees are entitled to be confined under humane conditions that provide for their “basic human needs.” *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981). “The Constitution does not mandate comfortable prisons, but neither does it permit inhumane ones[.]” *Snipes v. DeTella*, 95 F.3d 586, 590 (7th Cir. 1996).

To establish a constitutional violation with respect to an inmate’s living conditions, he must be able to demonstrate both: (1) the conditions were objectively so adverse that they deprived him “of the minimal civilized measure of life’s necessities,” and (2) the defendants acted with deliberate indifference with respect to the conditions. *Townsend v. Fuchs*, 522 F.3d 765, 773 (7th Cir. 2008) (quoting *Farmer*, 511 U.S. at 834). “Life’s necessities include shelter, heat, clothing, sanitation, and hygiene items.” *Woods v. Schmeltz*, No. 14-CV-1336, 2014 WL 7005094, at *1 (C.D. Ill. Dec. 11, 2014) (citing *Gillis v. Litscher*, 468 F.3d 488, 493 (7th Cir. 2006)); *see also Budd v. Motley*, 711 F.3d 840, 842–43 (7th Cir. 2013). Plaintiff alleges that he was strapped down for twenty-three hours as a form of punishment as opposed to any legitimate penological purpose. At the pleadings stage, the Court finds the allegations sufficient to proceed on an Eighth Amendment conditions of confinement claim against Pynenberg, Elsinger, and Hamilton.

Finally, with regard to the other named defendants, Utter, Beair, Kind, and Radtke, the Court will dismiss them for Plaintiff’s failure to state a claim against them. Section 1983 does not allow actions against persons merely because of their supervisory roles. *T.E. v. Grindle*, 599 F.3d 583, 588 (7th Cir. 2010). Only a defendant who is personally responsible for depriving the plaintiff of a constitutional right may be held liable under § 1983. *Grieveson v. Anderson*, 538 F.3d 763, 778 (7th Cir. 2008). Plaintiff

alleges only that these defendants are liable based on their supervisory capacity and failure to train employees; he does not allege any personal involvement of these defendants. As such, the Court will dismiss them from the case.

3. APPOINTMENT OF COUNSEL

The Court now turns to Plaintiff's motion to appoint counsel, ECF No. 3. As a civil litigant, Plaintiff has "neither a constitutional nor statutory right to a court-appointed attorney." *James v. Eli*, 889 F.3d 320, 326 (7th Cir. 2018). However, under 28 U.S.C. § 1915(e)(1), a "court may request an attorney to represent any person unable to afford counsel." A court should seek counsel to represent a plaintiff if: (1) he has made reasonable attempts to secure counsel; and (2) "'the difficulty of the case—factually and legally—exceeds the particular plaintiff's capacity as a layperson to coherently present it.'" *Navejar v. Iyiola*, 718 F.3d 692, 696 (7th Cir. 2013) (quoting *Pruitt v. Mote*, 503 F.3d 647, 655 (7th Cir. 2007) (en banc)). Whether to appoint counsel in a particular case is left to a court's discretion. *James*, 889 F.3d at 326; *McCaa v. Hamilton*, 893 F.3d 1027, 1031 (7th Cir. 2018).

While framed in terms of a plaintiff's capacity to litigate, this discretion must also be informed by the realities of recruiting counsel in this District. When a court recruits a lawyer to represent a pro se party, the lawyer takes the case pro bono. Unlike a lawyer appointed to represent a criminal defendant during his prosecution, who is paid by the government for his work, an attorney who takes a prisoner's civil case pro bono has no promise of compensation.

It is difficult to convince local lawyers to take such cases. Unlike other districts in this Circuit, *see, e.g.*, L.R. 83.35 (N.D. Ill.), the Eastern District of Wisconsin does not employ an involuntary appointment system

for lawyers admitted to practice in the District. Instead, the District relies on the willingness of lawyers to sign up for the Pro Bono Attorney Panel and, once there, accept appointments as needed. *See Pro Bono Program, available at: <http://www.wied.uscourts.gov/pro-bono-program>.*

The District is grateful to the lawyers who participate in the Pro Bono Program, but there are never enough volunteers, and those who do volunteer rarely take more than one or two cases a year. This is understandable, as many are already busy attending to fee-paying clients. Although the Pro Bono Program does provide for payment of certain litigation expenses, it does not directly compensate a lawyer for his or her time. Participants may seek attorney's fees when permitted by statute, such as in successful § 1983 cases, but they will otherwise go unpaid. The small pool of attorneys available to this District for pro bono appointments stands in stark contrast to that of the Court of Appeals, which regularly recruits counsel from across the nation to represent pro se plaintiffs on appeal. *See, e.g., James*, 889 F.3d at 323 (appointing counsel from Washington, D.C. to represent the pro se appellant); *McCaa*, 893 F.3d at 1029 (same).

Additionally, it must be remembered that, when a court determines that counsel recruitment is appropriate, it can take months to locate a willing lawyer. This delay works to the detriment of all parties and contravenes Congress's instruction in Federal Rule of Civil Procedure 1 that district courts must endeavor to secure the "just, speedy, and inexpensive determination of every action." Fed. R. Civ. P. 1. Thus, looming large over each request for counsel are a court's ever-more-limited time and resources.

With these considerations in mind, the Court returns to the question presented: whether counsel can and should be recruited to represent Plaintiff at this stage in this case. First, a court asks whether the litigant has

made “reasonable” efforts to obtain his own representation. *Pruitt*, 503 F.3d at 655; *Jackson v. County of McLean*, 953 F.2d 1070, 1073 (7th Cir. 1992). It is a question not often litigated; many district court judges either overlook arguably unreasonable efforts at obtaining counsel, or they impose eminently practical requirements such as the submission of evidence demonstrating that the prisoner has tried and failed to secure representation from several lawyers. *See, e.g., Kyle v. Feather*, No. 09-cv-90-bbc, 2009 WL 2474627, at *1 (W.D. Wis. Aug. 11, 2009).

The first element of *Pruitt* is fairly easy to satisfy, but it is not toothless, and it is not a mere technical condition of submitting a certain number of rejection letters. If it was, then a Wisconsin prisoner litigating a § 1983 action could submit rejection letters from ten randomly selected criminal defense lawyers from Nevada and call his work complete. This cannot be. The purpose of the reasonable-efforts requirement is to ensure that if a court and private lawyers must expend scarce resources to provide counsel for a prisoner, he has at least made a good-faith effort to avoid those costs by getting a lawyer himself. To fulfill this duty, a pro se prisoner should reach out to lawyers whose areas of practice suggest that they might consider taking his case. If he learns that some of the lawyers he has contacted do not, he should reach out to others before he concludes that no one will help him.

Plaintiff has submitted limited evidence that he contacted attorneys to represent him in the matter. *See* ECF No. 3-1. He includes only a copy of one letter showing that he attempted to contact one law firm to represent him. *Id.* Plaintiff’s demonstrated efforts to retain counsel are minimal at best. Even assuming, however, that Plaintiff’s efforts are sufficient to meet

the first *Pruitt* factor, Plaintiff cannot meet the second prong as discussed below.

Plaintiff's request must also succeed on the second *Pruitt* question: whether the difficulty of the case exceeds his capacity to coherently present it. This assessment must be made in light of the particular capabilities and circumstances presented by each pro se litigant. *James*, 889 F.3d at 326–27.

The Court of Appeals explains:

The second step is itself grounded in a two-fold inquiry into both the difficulty of the plaintiff's claims and the plaintiff's competence to litigate those claims himself. The inquiries are necessarily intertwined; the difficulty of the case is considered against the plaintiff's litigation capabilities, and those capabilities are examined in light of the challenges specific to the case at hand. Ultimately, the question is not whether a lawyer would present the case more effectively than the pro se plaintiff; if that were the test, district judges would be required to request counsel for every indigent litigant. Rather, the question is whether the difficulty of the case—factually and legally—exceeds the particular plaintiff's capacity as a layperson to coherently present it to the judge or jury himself. Notably, this inquiry extends beyond the trial stage of the proceedings. The relevant concern is whether the plaintiff appears competent to litigate his own claims, given their degree of difficulty. This includes all of the tasks that normally attend litigation: evidence gathering, preparing and responding to motions and other court filings, and trial.

Id. (citations and quotations omitted). While a court need not address every concern raised in a motion for appointment of counsel, it must address “those that bear directly” on the individual's capacity to litigate his case. *McCaa*, 893 F.3d at 1032.

The balancing contemplated in the second *Pruitt* step must be done against the backdrop that district courts cannot be expected to appoint

counsel in circumstances which are common to all or many prisoners. *See* *Bracey v. Grondin*, 712 F.3d 1012, 1017–18 (7th Cir. 2013); *Pruitt*, 503 F.3d 647, 656 (observing that the Seventh Circuit has “resisted laying down categorical rules regarding recruitment of counsel in particular types of cases”); *Harper v. Bolton*, 57 F. Supp. 3d 889, 893 (N.D. Ill. 2014). Doing so would place untenable burdens on court resources. It would also turn the discretion of § 1915(e)(2) on its head, making appointment of counsel the rule rather than the exception.

Several pronouncements from the Court of Appeals appear to be in tension with this principle. First, the Seventh Circuit notes that “complexity increases and competence decreases as a case proceeds to the advanced phases of litigation.” *James*, 889 F.3d at 327. It deems the “[a]dvanced phases” to include those from discovery onward. *Id.*; *McCaa*, 893 F.3d at 1032. But nearly every prisoner case proceeds to discovery, as the district court applies exceedingly lenient review during initial screening.

Second, the Seventh Circuit instructs that district courts should evaluate a prisoner’s competency irrespective of the involvement of a “jailhouse lawyer.” *McCaa*, 893 F.3d at 1033; *Walker v. Price*, No. 17-1345, 2018 WL 3967298, at *5 (7th Cir. Aug. 20, 2018). How courts should do this is not clear. A court rarely knows whether a filing was prepared by the plaintiff or someone helping him. And if a court does know that the plaintiff is receiving help, how can it assess his ability to litigate without knowing which portions of the filings are his work, and which come from the jailhouse lawyer? In *Walker*, the court determined that the inmate’s work product decreased in quality after his jailhouse lawyer was transferred to another prison. 2018 WL 3967298, at *6. Yet a savvy prisoner, looking to secure counsel for himself, could do this on purpose, crafting his filings to

downplay his own litigation capabilities. A court would have no way to assess whether the inmate is sandbagging it.

Finally, the Court of Appeals indicates that claims involving the state of mind of the defendant, such as those involving deliberate indifference, are particularly complex. *James*, 889 F.3d at 327–28; *McCaa*, 893 F.3d at 1032. Yet a government official’s culpable mental state is the foundation for most constitutional claims. Indeed, it is often the defining characteristic that sets § 1983 claims apart from their state-law tort analogues. Deliberate indifference is essential to nearly all claims of cruel and unusual punishment, excessive force, mistreatment of medical needs, and First Amendment and due process violations. *See Kingsley v. Henderson*, 135 S. Ct. 2466, 2473 (2015); *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998); *Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *Hambright v. Kemper*, 705 F. App’x 461, 462 (7th Cir. 2017); *Milton v. Slota*, 697 F. App’x 462, 464 (7th Cir. 2017) (“[N]egligently inflicted harm does not amount to a constitutional violation.”) (emphasis in original). Taken together, these claims comprise the vast majority of prisoner litigation in this District. If state-of-mind issues are generally beyond the ability of most pro se litigants to prove, then a court likely would need to appoint counsel in nearly every prisoner case. This is plainly impossible.

The guiding rule has always been that appointment of counsel is the exception rather than the rule in pro se prisoner litigation. Yet a confluence of all-too-common circumstances—discovery, jailhouse lawyers, and claims concerning state of mind—militate in favor of the appointment of counsel. As the list of reasons to appoint counsel grows, the reasons not to do so shrink. This District’s resources have not kept pace.

Against this backdrop, the Court finds that Plaintiff has not presented sufficient evidence and argument showing that he cannot litigate or try this matter competently on his own. In his motion, Plaintiff indicates that he does not have legal knowledge, suffers from mental health issues, and has a history of self-harm. ECF No. 3.

It is true, as Plaintiff intuits, that a lawyer would be helpful in navigating the legal system; trained attorneys are better positioned to successfully raise defenses. But Plaintiff's lack of legal training brings him in line with practically every other prisoner or former prisoner litigating in this Court. Further, the Court will assist Plaintiff in this regard (as it does with all prisoner litigants) by providing copies of the most pertinent federal and local procedural rules along with its scheduling order. Thus, ignorance of the law or court procedure is generally not a qualifying reason for appointment of counsel. Plaintiff has not demonstrated that his case is exceptional to require counsel. As such, the Court will therefore deny Plaintiff's motion to appoint counsel.

4. CONCLUSION

In light of the foregoing, the Court finds that Plaintiff may proceed on the following claims pursuant to 28 U.S.C. § 1915A(b):

Claim One: Eighth Amendment deliberate indifference to a serious medical need against Henning and Schierland.

Claim Two: Eighth Amendment conditions of confinement against Pynenberg, Elsinger, and Hamilton.

The Court has enclosed with this Order guides prepared by court staff to address common questions that arise in cases filed by prisoners. These guides are entitled, "Answers to Prisoner Litigants' Common

Questions" and "Answers to Pro Se Litigants' Common Questions." They contain information that Plaintiff may find useful in prosecuting his case.

Defendants should take note that, within forty-five (45) days of service of this Order, they are to file a summary judgment motion that raises all exhaustion-related challenges. The Court will issue a scheduling order at a later date that embodies other relevant deadlines.

Accordingly,

IT IS ORDERED that Plaintiff's motion for leave to proceed without prepaying the filing fee, ECF No. 2, be and the same is hereby **GRANTED**;

IT IS FURTHER ORDERED that Plaintiff's motion to appoint counsel, ECF No. 3, be and the same is hereby **DENIED**;

IT IS FURTHER ORDERED that Defendants Utter, Beair, Kind, and Radtke be and the same are hereby **DISMISSED** for the failure to state a claim against them;

IT IS FURTHER ORDERED that under an informal service agreement between the Wisconsin Department of Justice and this Court, a copy of the complaint and this Order have been electronically transmitted to the Wisconsin Department of Justice for service on Defendants Henning, Schierland, Pynenberg, Elsinger, and Hamilton;

IT IS FURTHER ORDERED that under the informal service agreement, those Defendants shall file a responsive pleading to the complaint within sixty (60) days;

IT IS FURTHER ORDERED that Defendants raise any exhaustion-related challenges by filing a motion for summary judgment within forty-five (45) days of service;

IT IS FURTHER ORDERED if Defendants contemplate a motion to dismiss, the parties must meet and confer before the motion is filed.

Defendants should take care to explain the reasons why they intend to move to dismiss the complaint, and Plaintiff should strongly consider filing an amended complaint. The Court expects this exercise in efficiency will obviate the need to file most motions to dismiss. Indeed, when the Court grants a motion to dismiss, it typically grants leave to amend unless it is “certain from the face of the complaint that any amendment would be futile or otherwise unwarranted.” *Harris v. Meisner*, No. 20-2650, 2021 WL 5563942, at *2 (7th Cir. Nov. 29, 2021) (quoting *Runnion ex rel. Runnion v. Girl Scouts of Greater Chi. & Nw. Ind.*, 786 F.3d 510, 524 (7th Cir. 2015)). Therefore, it is in both parties’ interest to discuss the matter prior to motion submissions. Briefs in support of, or opposition to, motions to dismiss should cite no more than ten (10) cases per claim. No string citations will be accepted. If Defendants file a motion to dismiss, Plaintiff is hereby warned that he must file a response, in accordance with Civil Local Rule 7 (E.D. Wis.), or he may be deemed to have waived any argument against dismissal and face dismissal of this matter with prejudice.

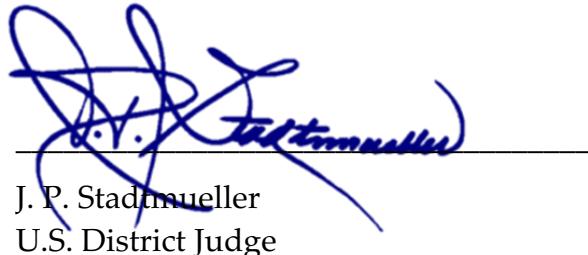
IT IS FURTHER ORDERED that the agency having custody of Plaintiff shall collect from his institution trust account the \$307.71 balance of the filing fee by collecting monthly payments from Plaintiff’s prison trust account in an amount equal to 20% of the preceding month’s income credited to Plaintiff’s trust account and forwarding payments to the Clerk of Court each time the amount in the account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2). The payments shall be clearly identified by the case name and number assigned to this case. If Plaintiff is transferred to another county, state, or federal institution, the transferring institution shall forward a copy of this Order along with his remaining balance to the receiving institution;

IT IS FURTHER ORDERED that a copy of this Order be sent to the officer in charge of the agency where Plaintiff is confined; and

IT IS FURTHER ORDERED that the Clerk's Office mail Plaintiff a copy of the guides entitled "Answers to Prisoner Litigants' Common Questions" and "Answers to Pro Se Litigants' Common Questions," along with this Order; and

Dated at Milwaukee, Wisconsin, this 20th day of January, 2023.

BY THE COURT:



J. P. Stadtmueller
U.S. District Judge

Plaintiffs who are inmates at Prisoner E-Filing Program institutions shall submit all correspondence and case filings to institution staff, who will scan and e-mail documents to the Court. Prisoner E-Filing is mandatory for all inmates at Columbia Correctional Institution, Dodge Correctional Institution, Green Bay Correctional Institution, Oshkosh Correctional Institution, Waupun Correctional Institution, and Wisconsin Secure Program Facility.

Plaintiffs who are inmates at all other prison facilities, or who have been released from custody, will be required to submit all correspondence and legal material to:

Office of the Clerk
United States District Court
Eastern District of Wisconsin
362 United States Courthouse
517 E. Wisconsin Avenue
Milwaukee, Wisconsin 53202

DO NOT MAIL ANYTHING DIRECTLY TO THE COURT'S CHAMBERS. If mail is received directly to the Court's chambers, **IT WILL BE RETURNED TO SENDER AND WILL NOT BE FILED IN THE CASE.**

Plaintiff is further advised that failure to timely file any brief, motion, response, or reply may result in the dismissal of this action for failure to prosecute. In addition, the parties must notify the Clerk of Court of any change of address. **IF PLAINTIFF FAILS TO PROVIDE AN UPDATED ADDRESS TO THE COURT AND MAIL IS RETURNED TO THE COURT AS UNDELIVERABLE, THE COURT WILL DISMISS THIS ACTION WITHOUT PREJUDICE.**